

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

BRIAN J. SPINKS,

Plaintiff,

vs.

ALVIN FODE, AMIE DANIELS,  
DIANNE JACOBS, DAVID  
PENTLAND, and MYRON  
BEESON,

Defendants.

CV 16-92-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE JUDGE

Plaintiff Brian Spinks, a prisoner proceeding without counsel, filed a Complaint under 42 U.S.C. § 1983 alleging violations of due process. The Court screened the Complaint under 28 U.S.C. § 1915 and concluded that it failed to state a claim and was subject to dismissal. (Doc. 7.) As it might have been possible to cure the defects with the allegation of additional facts, Mr. Spinks was given thirty days to file an amended complaint. (Doc. 7.) He did not do so.

Accordingly, for the reasons set forth in the Court's June 8, 2017 Order (Doc. 7), the Court issues the following:

**RECOMMENDATIONS**

1. This matter should be DISMISSED WITH PREJUDICE for failure to

state a claim.

2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court should be directed to have the docket reflect that the Court certifies under Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike under 28 U.S.C. § 1915(g) because Mr. Spinks failed to state a claim upon which relief may be granted.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Spinks may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.<sup>1</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district

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<sup>1</sup>As this deadline allows a party to act after the Findings and Recommendations is “served,” it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 28th day of July 2017.

/s/ John Johnston  
John Johnston  
United States Magistrate Judge